IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMONS FOR JUDGMENT NO.61 OF 2007
IN
SUMMARY SUIT NO.2171 OF 2006

Jayantilal Thakersy Shah. ...Plaintiff.
Vs.
Evergreen Drums & Cans Pvt. Ltd. ...Defendant.
....
Mr.Jayesh B. Kocheta for the Plaintiff.
Mr. S. U. Pandey for the Defendant.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.
16th April 2007.

P.C.:

The claim in the Summary Suit under Order 37 of the Code of Civil Procedure, 1908 arises out of an agreement dated 3rd March 2005 by which the Plaintiff was to procure orders for the Defendant and to receive a commission at the rate of Rs. 1.20 per can. It has not been disputed that the agreement was executed on behalf of the Plaintiff and the Defendant. The Plaintiff raised a bill in the amount of Rs. 3.60 lakhs as commission for three lakh cans supplied to a third party (Exotic Fruits Pvt.Ltd.). By a letter dated 4th July 2005, the Defendant stated that it was instructing Exotic Fruits Pvt. Ltd. to deduct the sales commission and pay it over directly to the Plaintiff from the bills raised by the Defendant. This

was against a debit note dated 21st June 2005 raised by the Plaintiff. An amount of Rs. 1,58,000/- was received by the Plaintiff in part payment and on 14th July 2005 a bill for the balance of Rs. 2.02 lakhs was raised. Thereupon, by a letter dated 20th July 2005, the Defendant purported to communicate that the agreement dated 3rd January 2005 was null and void and "hence terminated".

Two defences have been raised at the hearing. The first defence is that the there was no privity of contract between the Defendant and the Plaintiff and that the transaction of the Defendant was with Uday Sales Corporation. This is, however, belied by the agreement dated 3rd March 2005 which is between parties to the suit. Moreover, the Defendant by its letter dated 4th July 2005 has clearly accepted its liability to pay an amount of Rs. 3.60 lakhs to the Plaintiff, but stated that it would ensure that the payment would be made by the third party to whom cans were supplied. A part of the amount due has been paid. There is, therefore, no substance in the defence.

The second defence as urged is as regards jurisdiction of the Court. In para 14 of the plaint, it is stated that the agreement

dated 3rd March 2005 was executed at Mumbai and that part payments were received from the Defendant at Mumbai. Leave under Clause 12 of the Letters Patent has already been granted.

In these circumstances, at this stage, it cannot be held that the Court prima facie has no jurisdiction to try and entertain the suit. However, in the interests of justice it would, in my view, be appropriate to grant leave to defend the suit, conditional on a deposit of Rs.2 lakhs in this court within 8 weeks from today. There shall be an order accordingly. Upon the deposit being made, the Defendant would be at liberty to file a Written Statement within 8 weeks.

Upon deposit, the amount shall be invested in a fixed deposit of a Nationalized Bank to be renewed periodically during the pendency of the suit.

The Summons for Judgment is accordingly disposed of.

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